

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. CATHERINE M WOODS

CASE NO. C20161761

COURT REPORTER: Patricia Calabro
Courtroom - 583

DATE: August 22, 2016

RICHARD RODGERS, et al.,
Plaintiffs

Veronica M Thorson, Esq. and James M Manley,
Esq. counsel for Plaintiffs

VS.

CHARLES H HUCKLEBERRY, et al.,
Defendants

Regina L. Nassen, Esq. and Andrew Lawrence
Flagg, Esq. counsel for Defendants

MINUTE ENTRY

DEFENDANTS' MOTION TO DISMISS

No parties are present.

The Court indicates that a media request for cameras to film the hearing this date was provided the previous Friday afternoon and it was not timely.

Based on Rule 122 of the Supreme Court rules, the request for cameras to be allowed in the courtroom was declined.

The Court notes that this date, there was a media request to allow a personal recording device to be used by a member of the Arizona Daily Star.

The Court grants the Arizona Daily Star's media request to allow a personal recording device in the courtroom; in addition the Court approves a member of the media's request to use a laptop computer to take notes.

The Court indicates that it personally knows a named Plaintiff, Mr. David Preston, who served as the Court's Certified Public Accountant approximately 10 years ago and the Court does not believe that there is any conflict of interest in presiding over this case. The Court presents the issue to counsel to determine whether they wish to proceed today, or to have the matter continued in order to evaluate whether to request a change of judge.

Ms. Nassen indicates that she has no objection to the Court presiding over this case.

Jesse Costanza
Deputy Clerk

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Mr. Manley requests additional time to confer with his client regarding whether the conflict of interest exists or would prefer another judicial officer to preside.

Upon inquiry of the Court after a brief recess,

Mr. Manley indicates that he has no objection to the Court presiding over this case.

Ms. Nassen and Mr. Manley argue to the Court.

THE COURT FINDS that the doctrine of laches does not preclude the Plaintiffs from being heard on their complaint. The Plaintiffs have filed a very detailed and fairly sophisticated complaint barely more than two months after the contract was entered into and the Court is unable to find that this equates to an unreasonable delay in bringing this action.

The Court is unable to find the Defense has met its burden that Count Two of the Complaint should be dismissed. Count Two is the claim based on A.R.S. §11-256. There are several examples where the legislature has exempted public entities from the requirements of A.R.S. §11-256 and it has not done so with respect to economic development.

IT IS ORDERED that the motion to dismiss Count Two is denied without prejudice. If there is additional case law or other authorities that have not been referred to in the written submissions or in argument presented this date, the Court may consider the additional or new authorities.

With respect to the standing issue for Counts Three and Four and for the reasons stated on the record,

THE COURT FINDS that the Defendants have failed to demonstrate that the Plaintiffs lack standing to bring those causes of action.

With respect to the Motion to Dismiss Count One based on the gift clause of the Arizona Constitution, The Court takes the matter under advisement.

IT IS ORDERED that the Defendants' Motion to Dismiss as to Counts Two, Three and Four is denied.

cc: Hon. Catherine M Woods
Andrew Lawrence Flagg, Esq.
James M Manley, Esq.
Regina L. Nassen, Esq.
Veronica M Thorson, Esq.
Clerk of Court - Under Advisement Clerk

Jesse Costanza
Deputy Clerk